IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2715 OF 2004

Kamgar Suraksha Union. ...Petitioner.
Vs.
M/s. High Profile Creation & Ors. ...Respondents.
....
Mr.Ashish Kamat i/b. Godfrey D'silva for the Petitioner.
Mr. R.S. Pai i/b. Sanjay Udeshi & Co. for the Respondents.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

December 12, 2006.

P.C.

The Industrial Court has dismissed a complaint of unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

On behalf of the workmen it was sought to be urged that there was in fact, no closure of the establishment and that the notice that was issued on 20th June 1998, announcing closure of the establishment with effect from 22nd June 1998 was not genuine. The First and Second Respondents are proprietary concerns. The Third Respondent is the spouse of the Fourth

Respondent. On this basis it was sought to be submitted that a functional integrality would exist as between the First and Second Respondents and there was non-compliance of the provisions of Section 25FFA of the Industrial Disputes Act, 1947. The application of Section 25FFA was sought to be urged on the basis that the employees of the two concerns taken together would exceed 50 in number. Reliance was sought to be placed on the letter dated 4th July 1998 of the Chief Inspector, Shops and Establishments of the Municipal Corporation to demonstrate that on 26th June 1998, five days after the purported closure, the business was still being carried on.

The question as to whether there was a closure in fact, is a question of fact to be decided on the evidence on the record. The Industrial Court has adverted to the admission which was elucidated in the cross-examination of the two witnesses who deposed on behalf of the Union. The first witness Shri Prashant Shanbag stated that admittedly the company has stopped its work at the particular place with effect from 22nd June 1998. The witness also admitted that the Second Respondent has similarly stopped work from 22nd June 1998. There were according to the

witness, seven workers engaged by the Second Respondent who have also accepted their dues. In so far as the First Respondent is concerned, the witness similarly, inter alia, accepted that several workmen had settled their dues and left their job. The witness specifically admitted that after the activities were closed, the workmen had met the owner of the Gala once, and thereafter did not meet him. The Second Respondent, Shri Maula Ali, similarly deposed that after the Company was closed, the machinery was removed. On the evidence of these witnesses, it is abundantly clear that there was a closure in fact. There was absolutely no evidence to establish that there was functional integrality between the two Units owned by Respondent Nos.3 and 4. Merely because Respondent Nos.3 and 4 are spouses, it would not be possible to hold that their Units were functionally integral. The proprietor of the First Respondent who stepped into the witness box also deposed that after the business had been closed, the premises in which the business was carried on, which had taken on leave and licence basis, had been handed back to the owner.

In these circumstances, the interference of this Court in the exercise of the jurisdiction under Article 226 of the Constitution

is not warranted. The appreciation of the evidence by the Industrial Court cannot be regarded as perverse or as contrary to the evidence on record. There was no material to indicate that the closure was a mere pretense or that there was no closure in fact. The Industrial Court noted that some workers were still to collect their legal dues and that their dues had been computed and deposited in Court. An amount of Rs.69,013/- was deposited by the management. No case for interference is made out. The petition is dismissed.

....